

DISPOSITION: June 24, 1953. Default decree of condemnation and destruction.

NUTS AND NUT PRODUCTS

20339. Action for declaratory judgment and injunction. Stevens Industries, Inc. v. John P. Cowart, J. J. McManus, and Oscar Ross Ewing. Complaint dismissed.

COMPLAINT FILED: October 17, 1947, Middle District of Georgia, by Stevens Industries, Inc., plaintiff, against John P. Cowart, United States Attorney for the Middle District of Georgia, J. J. McManus, Chief of the Atlanta District of the Food and Drug Administration, and Oscar Ross Ewing, Administrator for the Federal Security Agency.

NATURE OF CHARGE: The complaint alleged that the plaintiff was engaged in the business of selling and shipping raw shelled peanuts in interstate commerce; that the plaintiff had sold 2 cars of raw shelled peanuts on October 7, 1947, which were to be shipped in interstate commerce to the buyer, who would process the peanuts into peanut butter and confectionery items; and that it was the plaintiff's intention to utilize sacks of nonuniform size and weight in making delivery of the peanuts, that the sacks were for convenience only in shipping the peanuts, that they did not represent the unit of sale, and that they would not be labeled.

It was alleged further that the Food and Drug Administration had ruled on July 24, 1939, that all peanuts sold in bulk but delivered in sacks for the convenience of the shipper did not require labeling; that on June 6, 1947, a new interpretation was issued to the effect that shelled peanuts in sacks, whether or not shipped in carload lots, should bear the following information required by the law as to food in package form, namely, the name of the product, an accurate statement of the net weight, and the name and place of business of the buyer or distributor; and that a ruling was made under date of July 15, 1947, by the then Acting Federal Security Administrator, that there could be no exemptions from the labeling provisions of the Act where peanuts were sold for the purpose of being processed into peanut butter or confectionery items.

PRAYER OF COMPLAINT: That the interpretation of June 6, 1947, and the ruling of July 15, 1947, be declared void and contrary to law, and that pending such judgment, the defendants be restrained from instituting any action against the plaintiff or its products under the provisions of the Federal Food, Drug, and Cosmetic Act, or under the interpretation and ruling complained of.

DISPOSITION: The matter came on for hearing before the court, and at its conclusion, the court entered the following order on December 15, 1947:

DAVIS, *District Judge*: "This case came on for a hearing before me on a motion to dismiss filed by defendants John P. Cowart, United States Attorney for the Middle District of Georgia, J. J. McManus, Chief, Atlanta Station of the Food and Drug Administration, and Oscar Ross Ewing, Administrator for the Federal Security Agency. The questions raised on said motion have been argued by briefs submitted by counsel for both the plaintiff and the defendants. Counsel for the plaintiff concedes that the Court has no jurisdiction over the person of Oscar Ross Ewing, Administrator for the Federal Security Agency, as the defendant is a non-resident of this district. After careful consideration of the complaint and the issues raised by said motion, the Court, on authority of *Janes v. Lake Wales Citrus Growers Association*, 110 F. (2d), 653 (5 C. C. A.) and *Helco Products Company v. McNutt*, 137 F.

(2d), 681 (App. D. C.), is of opinion the complaint fails to state a claim upon which the relief prayed for can be granted and, therefore, should be dismissed. "It is, therefore, CONSIDERED, ORDERED and ADJUDGED that the complaint be, and the same hereby is, dismissed without prejudice; and at the cost of the plaintiff."

20340. Adulteration of unshelled almonds. U. S. v. 16 Cases * * *. (F. D. C. No. 34480. Sample No. 64061-L.)

LABEL FILED: December 19, 1952, Western District of Washington.

ALLEGED SHIPMENT: On or about September 23, 1952, by the California Almond Growers Exchange, from Sacramento, Calif.

PRODUCT: 16 cases, each containing 24 1-pound bags, of unshelled almonds at Seattle, Wash.

LABEL, IN PART: (Bag) "Blue Diamond Brand * * * California Softshell Almonds."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of insect-damaged almonds, and of a decomposed substance by reason of the presence of moldy almonds; and it was otherwise unfit for food by reason of the presence of gummy almonds.

DISPOSITION: July 15, 1953. Default decree of condemnation and destruction

20341. Adulteration of peanut butter. U. S. v. 43 Cases, etc. (F. D. C. No. 34235. Sample Nos. 40626-L, 40627-L.)

LABEL FILED: On or about November 25, 1952, Western District of Washington.

ALLEGED SHIPMENT: On or about September 3 and 25, 1952, by the Pacific Fruit & Produce Co., from Oakland, Calif.

PRODUCT: 43 cases, each containing 24 14-ounce jars, and 48 cases, each containing 12 10-ounce jars, of peanut butter at Seattle, Wash.

LABEL, IN PART: (Jar) "Stanby * * * Homogenized Peanut Butter."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect parts; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: April 3, 1953. Default decree of condemnation and destruction.

20342. Adulteration of peanut butter. U. S. v. 29 Cases * * *. (F. D. C. No. 34622. Sample No. 39474-L.)

LABEL FILED: On or about January 21, 1953, District of Maryland.

ALLEGED SHIPMENT: On or about October 13 and December 2, 1952, by Producers Peanut Co., Inc., from Suffolk, Va.

PRODUCT: 29 cases, each containing 24 1-pound jars, of peanut butter at Baltimore, Md.

LABEL, IN PART: (Jar) "The Rider Brand Homogenized Peanut Butter."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of insect parts and rodent hairs; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: April 16, 1953. Producers Peanut Co., Inc., having appeared as claimant and later having withdrawn its claim, judgment of condemnation was entered and the court ordered that the product be destroyed.